

REMARKS

Applicants would like to thank Examiner Bennett for the courteous and helpful Interview conducted June 26, 2003, which materially furthered prosecution in this case.

During the Interview, Applicants' representative provided the Examiner with two representative compositions, one of which was made in accordance with the present invention and the other of which was made in accordance with the primary reference upon which the remaining § 103 rejections are based, U.S. patent 5,851,539 ("Mellul"). As the Examiner plainly saw, a significant difference existed between the quality of the claimed composition and that of the comparative composition. The Examiner and Applicants' representative discussed different ways to best reflect this difference in the pending claims.

In the Amendment filed May 1, 2003, Applicants had amended the claims to require the claimed compositions to be grainy. However, as explained by Applicants' representative, the grainy nature of the claimed compositions is best demonstrated or illustrated by the solid nature of the compositions and/or the matte finish of the compositions. In view of this, Applicants' representative proposed amending the claims to remove the "grainy" language from the claims and submitting a Rule 132 declaration explaining that the graininess of the claimed compositions is related to the claimed solidity of these compositions, thereby linking Applicants' showing of unexpected and surprising results to the pending claims. The Examiner indicated that such an amendment and Rule 132 declaration could place the case in condition for allowance.

Accordingly, Applicants have amended the claims above to delete the "grainy" language from the claims. Moreover, Applicants will submit (within the next few days) a Rule 132 declaration in which the two compositions provided to the Examiner during the

interview are discussed including their differences with respect to graininess, solidity and appearance as well as the significant commercial implications of these differences.

In view of the above amendment to claim 1, the Rule 132 declaration to be submitted shortly and the comments made during the June 26, 2003 interview, Applicants respectfully submit that to the extent a *prima facie* case of obviousness exists based on prior art in the absence of unexpected results, Applicants' present showing of unexpected results has rebutted it and that, accordingly, the pending § 103 rejections should be withdrawn.

Moreover, Applicants respectfully submit that no *prima facie* case of obviousness exists, and that the § 103 rejections should be withdrawn.

The Office Action rejected claims 1, 3-21 and 23-28 under 35 U.S.C. § 103 as obvious over U.S. patent 5,851,539 ("Mellul"), either alone or in combination with U.S. patent 5,919,468 ("Bara") or KR 9202286 ("Kang").

The pending claims relate to solid compositions comprising an aqueous phase dispersed in an oily phase, a silicone emulsifier, and at least 3% wax, wherein the composition comprises at least 70% water, the aqueous phase represents at least 75% of the composition, and the oily phase/silicone emulsifier ratio by weight is equal to or greater than 5. Thus, the presently claimed invention is directed to solid water-in-oil (W/O) compositions having a large amount of aqueous phase and water, while having a relatively small amount of silicone emulsifier.

Mellul neither teaches nor suggests such solid W/O emulsions, nor does this reference provide any motivation to modify the compositions disclosed therein to yield such compositions.

First, Mellul neither teaches nor suggests that her compositions have the claimed compressive strength characteristics. In contrast, the claimed compositions possess the required compressive strength characteristics and, thus, are solid.

Second, Mellul's compositions do not contain at least 70% water and an aqueous phase of at least 75%.¹

Third, Mellul's compositions are not required to contain at least 3% wax.²

Thus, Mellul fails to teach, suggest or recognize the importance of several of the required individual elements of the claimed invention, and nothing in Mellul suggests modifying all of these elements to yield the claimed invention. This lack of suggestion to modify all of these elements is particularly significant given that the required grainy nature of the claimed compositions is believed to result from the high water content, the low oil content and the compressive strength characteristics set forth in the pending claims.

Bara and Kang do not compensate for Mellul's deficiencies. Bara relates to using certain organopolysiloxanes to mattify skin. Kang relates to emulsions containing electrolytes. Neither of these references teaches or suggests solid, grainy w/o compositions

¹ Mellul states that her compositions' aqueous phase could be 10-90% of the composition. (Col. 7, line 51). However, Mellul does not indicate how much of the aqueous phase should be water. In fact, Mellul's examples actually lead one skilled in the art away from such compositions. Mellul's examples 1-15 and 22-25 contain 70% water, 5-10% surfactant and 20-25% oil. As Mellul's examples incorporate more ingredients, the amount of water decreases. (See, examples 26-33). Thus, based on Mellul's disclosure, one skilled in the art, seeking to produce compositions containing ingredients in addition to water, oil and surfactant, would use less than 70% water.

² Mellul merely states that waxes can be incorporated into her emulsions as part of the oil phase (col. 6, lines 27-36), but does not state that waxes must be present (or that they must be present in a specified amount). Moreover, Mellul does not exemplify any compositions containing wax. In contrast, the claimed invention requires the presence of at least 3% wax.

containing all of the claimed invention's required elements including a silicone surfactant, at least 70% water, at least 75% aqueous phase and at least 3% wax.

That the claimed compositions would not have been obvious over the cited references will be demonstrated by the Rule 132 declaration to be submitted shortly and the unexpected results discussed therein. The claimed compositions are solid, matte, grainy compositions having a fresh feeling upon application. In contrast, Mellul's compositions do not possess these same characteristics. Nothing in any of the cited references would have motivated one skilled in the art to modify Mellul's compositions in such a way to expect the production of the solid, grainy, "fresh" compositions of the claimed invention.

Finally, new claims 29-31 are free of the cited art for the additional reason that these claims require the oils to be silicone and/or hydrocarbon oils. In contrast, Mellul requires the presence of fluorohydrocarbon oil, and distinguishes compositions containing silicone/hydrocarbon oil from her fluorohydrocarbon oil-containing compositions. (See, e.g., Mellul at col. 1, lines 26-29). Support for new claims 29-31 exists, *inter alia*, at page 5, lines 28-30 of the present specification.

In view of the above, Applicants respectfully submit that the rejection under 35 U.S.C. §103 should be withdrawn.

Applicants believe that the present application is in condition for allowance. Prompt and favorable consideration is earnestly solicited.

Respectfully submitted,

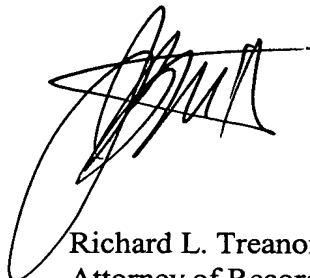
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A handwritten signature in black ink, appearing to read 'R. Treanor', with a large, sweeping loop on the left side.

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